

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRICKCO INCORPORATED,
a Michigan corporation, individually
and as the representative of a class
of similarly situated persons,

Plaintiff,

v.

Case No. 11-CV-11168
HON. GEORGE CARAM STEEH

NEHMEH ENTERPRISES, INC.
d/b/a LITTLE CAESAR'S,
ALI NEHMEH, CAPITAL
COMMUNICATIONS, INC.,
and LESTER MORALES,

Defendants.

/

ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENT (#68, #69, and #70)

On March 22, 2011, plaintiff filed a class action complaint alleging Nehmeh Enterprises, Inc. d/b/a Little Caesar's ("NEI"), Little Caesar Enterprises, Inc., Little Caesar Detroit DMA Advertising Program, Inc., and Caesar Fund, Inc. violated the Telephone Consumer Protection Act, 47 U.S.C. §227, by sending unsolicited advertising faxes to plaintiff and others, and alleging conversion on the same basis. On May 18, 2011, plaintiff filed a first amended class action complaint, adding defendants Ali Nehmeh, Capitol Communications, Inc., and Lester Morales and dismissing the Little Caesar defendants. The case was stayed from August 15, 2011 to January 23, 2012. On March 12, 2012, the court declined to exercise supplemental jurisdiction over the conversion claim in this case and therefore dismissed the conversion claim without prejudice. The motions currently

before the court are defendants' motions for summary judgment. Defendants argue that Capitol Communications, d/b/a Val-U-Fax, is a permission based fax service and that Frickco gave Val-U-Fax permission to send the fax advertisement at issue in this case. Defendants therefore argue the fax advertisement was not "unsolicited" as required by the statute. The TCPA does not prohibit solicitation messages sent "to any person with that person's prior express invitation or permission." 47 U.S.C. § 227(a)(4) and (5). Defendant Capitol Communications sent requests for admission to plaintiff and plaintiff failed to deny within the time permitted by the rules. As a result, plaintiff has admitted that it: (1) voluntarily provided its fax number to Val-U-Fax, (2) agreed to receive fax advertisements from Val-U-Fax, and (3) never contacted Val-U-Fax to request it to stop sending facsimile advertisements. The court ordered a July 9, 2012 deadline for responding to the motions for summary judgment. No response was filed by July 9, 2012; to date, no response to defendants' motions for summary judgment has been filed. The court finds that oral argument is not necessary. See Local Rule 7.1(f). For the reasons set forth in the motions, defendants' motions for summary judgment are GRANTED. For the same reasons, the cross-claim filed by Nehmeh Enterprises, Inc. and Ali Nehmeh is DISMISSED.

IT IS SO ORDERED.

Dated: July 12, 2012

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on July 12, 2012, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk